2.9

THE TREND CONCERNING THE TORT LIABILITY OF SCHOOL DISTRICTS IN IOWA

A Field Report

Presented to

The Graduate Division

Drake University

In Partial Fulfillment

of the Requirements for the Degree

Master of Science in Education

---

by

Roger Aceto

August 1965

1965
Ac 31

THE TREND CONCERNING THE TORT LIABILITY OF SCHOOL DISTRICTS IN IOWA

by

Roger Aceto

Approved by Committee:

Russell L. Wanderscheid
Chairman

Marvin Fellman

Earle L. Canfield
Dean of the Graduate Division

217259

1622M
218

TABLE OF CONTENTS

CHAPTER I

INTRODUCTION

Iowa Schools, their boards and districts, were created by constitutional provision.[1] The State of Iowa, in its legislature, had the authority to create school districts. The school districts, by definition of the Iowa Supreme Court, became "political subdivisions . . . called quasi-corporations"[2] of the state with the primary objective being to extend the educative program into its particular area of Iowa. As an agency of the state, the school district became cloaked in certain sanctions, privileges, and immunities. Late in the Nineteenth Century, when the Iowa Supreme Court endorsed the theory of sovereign immunity, that is, immunity from suit in its sovereign capacity, local school districts became likewise immune from suit, and statutory provisions proved not otherwise. Sovereign immunity has been the rule rather than the exception as applied in courts around Iowa and the United States. A recent trend has developed in both courts and the legislature and the effect of that trend on the school district and the tort liability of the school

---

[1] Iowa Constitution, Article IX, Sections 1-15.

[2] Kincaid v Hardin County, 53 Iowa 430, 5NW589 (1880).

district in Iowa is the problem to be discussed in this study. The matter of individual employees has been the topic of previous studies.[1]

I. STATEMENT OF THE PROBLEM

The purpose to be achieved by pursuing the trend in school district tort liability in Iowa was twofold. An examination of the status of the law relating to the tort liability(ies) of school districts in Iowa was one of the proposed objectives. The other and perhaps more challenging purpose was that of evaluating the changes in the law relative to school district liability in tort. Within the evaluation an analysis was made. From that analysis an attempt to predict the direction of the change in the law was based on the data gathered.

II. THE NEED

There has been a definite need for the many people involved in the school district endeavor to be made cognizant of the law as it now stands as well as the law in its new directions. Board members and administrators must be kept abreast of the trend in the law relative to the tort liability of school districts, so the business of making

---

[1]Roland Kok, "Tort Liability in H. and P.E. Activities" (unpublished Master's thesis, Drake University, Des Moines, Iowa, 1963).

school policies and putting those policies into effect might be better achieved. Due to the fact that teachers, staff members and other members of the school district community are affected by legal trends regarding liability, there is a need for those people to be informed of the legal trend concerning school district tort liability. Members of the local community would be able to perform their duties as responsible citizens if they could recognize and react to the trend in the law concerning school district tort liability. With adequate cognizance of legal trends, citizens would be prompted to promote better laws.

III. ORGANIZATION

Chapter II will include a review of literature and cases that give a foundation for the law as it now stands.

Chapter III will present the data that shows the trend concerning the tort liability of school districts in Iowa.

Chapter IV will summarize and conclude the status of the law. An evaluation of the trend will complete the report.

IV. LIMITATIONS

Each research project of this nature is limited in measure and/or direction. Because the doctrine of sovereign immunity was strictly adhered to, cases involving the tort

liability of school districts have been decided on that basis alone. Adequate foundation for legal conclusions was found in several decisions. One of those areas is in state Supreme Court decisions cited in Iowa Supreme Court cases.

The factors that tend to limit an analysis of any legal trend are several. One of those factors is the number of supreme court decisions that ruled on the tort liability of school districts or matters of a related area to which some comparison or analogy can be made. Recent legislative enactments add to or subtract from the depth of the analysis. School districts and not their individual officers and employees will be the matter of consideration for the purposes of this study.

V. ASSUMPTIONS

That the law is changing is one of three basic assumptions that must be made. Judicial opinion may vary as to the merits of a certain case due to the fact that each member of the court may take a different view of the merits of that particular case. Jurisdictions investigated, both in Iowa and neighboring states, that have ruled on the tort liability of school districts naturally reflect the legislative provisions of that state. The greatest influence exerted on the legislative provisions and court decisions concerning the tort liability of school districts

has stemmed from the philosophical approach each jurisdiction pursued. If the state subscribes to the doctrine of sovereign immunity, the laws and court decisions from that state are so limited. Conversely, if sovereign immunity is not the state legal theme, the laws and decisions will so indicate.

VI. DEFINITION OF TERMS

Certain definitions had to be enumerated for the puspose of a more clear cut understanding of the trend in school district tort liability.

Sovereign immunity. Sovereign immunity implies that the state or its political subdivisions (school districts included) cannot be sued.[1]

Tortious act. A tortious act is a civil or private conduct that results in a physical injury to the person or injury to the reputation or feelings.[2]

Liability. Liability in the legal sense is the eligibility to be named and held responsible in a law suit.[3]

Quasi. Quasi means almost, nearly, analogous to.[4]

---

[1] Black's Law Dictionary, (fourth edition; West Publishing Company, 1951).

[2] Ibid. [3] Ibid. [4] Ibid.

Respondeat superior. The respondeat superior is the superior responsible for the acts of his agents or employees.[1]

VII. PROCEDURES

Procedurally, the course followed in investigating the problem began with a review of literature and cases starting with an historical perusal of early English Common Law, when from a starting point at the year 1788, A.D. a brief analysis was made of the direction of the law with factors that lent substance to changes and status of the laws concerning the tort liability school districts in Iowa.

After the historical background of the problem was ascertained, an investigation of the status of the law at the time of the writing of this report was made. Selected legislative enactments served to establish what the law prescribed in some areas. Case studies depicted the way the legislative enactments were interpreted to meet individually different situations. It should be noted here that a law that finds itself in the statutes of a particular state never really has achieved its full force and effect until it has been used as an issue in that state's supreme court. Once the supreme court of a state acts upon a law, it then serves as legal precedence for ensuing cases. Law review articles serve to illuminate the problem in that

---

[1] Ibid.

the articles consolidate similar cases based on the same legal precedence and quite homogeneous legislative provisions and seek to show the conflicts and parallels in some specific area of the law.

A report and evaluation of the data was made giving a picture of the trend in school district liability for tort. Immediately following a summary of the data, conclusions were developed, showing the validity of the hypothesis that there was a definite trend concerning the tort liability of school districts in Iowa. Based on the presentation of the reported data, recommendations were made pertaining directly to possible solution of the problem, the trend concerning the tort liability of school districts in Iowa.

CHAPTER II

REVIEW OF LITERATURE--HISTORICAL FOUNDATIONS

Historically, suits against agencies or political subdivisions of the state where the state is immune from suit have not been successful because court interpretation has generally been that the state and its agencies are immune from suit.

> The rule is well settled that the state, unless it has assumed such liability by constitutional mandate or legislative enactment, is not liable for injuries arising from the negligence or other tortious acts or conduct of any of its officers, agents, or servants, committed in the performance of their duties.[1]

The doctrine of governmental immunity by which the sovereign state has been held immune from liability for acts of negligence committed by its agents or servants in the exercise of a governmental function, such as a perpetuating of the state's endeavor at the local school district level, is a doctrine of long duration. The case to which some historians point as the beginning point of the doctrine of sovereign immunity was tried in England in 1788. Russell v Men of Devon.[2] Russell, a citizen of Devon,

---

[1]"States, Territories, and Dependencies," American Jurisprudence, IL, Chapter 76, p. 288.

[2]Russell v Men of Devon, 100 Eng. Rep. 359, 2 T.R. 667 (1788).

sued the men in his village because of their negligence in constructing and maintaining a bridge which collapsed and caused injury to his horse and wagon. The court denied the action because: (1) to permit it would lead to an infinity of actions, (2) there was no precedent for attempting such a suit, (3) only the legislature should impose liability of this kind, (4) even if defendants are to be considered a corporation or quasi-corporation, there is no fund out of which to satisfy the claim, (5) neither law nor reason supports the action, (6) there is a strong presumption that what has never been done cannot be done, and (7) although there is a legal principle which permits a remedy for every injury resulting from the neglect of another, a more applicable principle is that it is better that an individual should sustain an injury than that the public should suffer an inconvenience. The court concluded that the suit should not be permitted "because the action must be brought against the public,"[1] not the men of the village individually.

Some historians urge that the doctrine of governmental immunity stems from the early English concept that the king can do no wrong.[2] Whether or not the doctrine came from such a beginning, it is now no longer a part of

---

[1] Ibid.

[2] T. F. Plucknett, A Concise History of the Common Law (fifth edition: Little, Brown, & Co., 1956).

English law.[1] Over a hundred years ago Chief Justice Cockburn, presiding over the King's Bench, said in the case of Feather v Regina, "From the maxim that the king can do no wrong, it follows as a necessary consequence that the king cannot authorize a wrong."[2] That school districts throughout Iowa and the United States would someday be directly affected by such a statement seemed improbable.

Courts in Iowa had, until very recently, strongly maintained that the doctrine of governmental immunity had value and the state supreme court frequently refused to modify the rule. The Iowa Supreme Court in 1880, in the case of Kincaid v Hardin County[3] quoted from a case that had been tried before the same court twelve years earlier saying

> . . . the decisions are almost (though not wholly) uniform, to the effect that counties and other quasi-corporations are not liable to private actions for the neglect of their officers . . . , unless the statute has in so many words, created the liability, specially giving the action to the party injured.[4]

The single exception to the immunity doctrine as applied in Iowa is found in Wilson and Gustin v Jefferson

---

[1]Earl Stafford, "Tort Liability of School Districts," Elementary School Journal, XXX (September, 1929), 34-50.

[2]Feather v Regina '22 Eng. Rep. 1191 (1863).

[3]Kincaid v Hardin County, 53 Iowa 430 (1880).

[4]Soper v Henry County, 26 Iowa 264 (1868).

County.[1] The principle involved in that case dealt with whether or not a county (political subdivision of the state) is liable for negligence in the construction and maintenance of its bridges. The court felt it was:

> We think so because the county is charged with the duty of building and maintaining bridges, and even repairing them, when the requisite expenditure for doing so is large. This duty involves the corresponding obligation or liability to pay damages resulting from a neglect of the same.[2]

Later cases also held counties in Iowa liable for negligence in bridge maintenance.[3]

Teachers, administrators, and school board members have been sued individually and held liable in tort,[4] but school districts, being cloaked with the same immunity from suit that the state has, have not. The presentation of data to follow will give light to the fact that a trend is presently being felt with regard to tort claims against the state of Iowa, its agencies, quasi-corporations, and political subdivisions. That the doctrine of sovereign immunity is failing and the effect of that failing on school districts will be pointed out in the following pages.

---

[1] Wilson & Gustin v Jefferson County, 13 Iowa 181 (1862); also Hustson v Iowa County, 43 Iowa 450 (1876).

[2] Ibid.

[3] Moreland v Mitchell County, 40 Iowa 394 (1874).

[4] State v Mitzner, 50 Iowa 145 (1878).

CHAPTER III

THE TREND

Iowa Rule of Civil Procedure 9 specifically allows the state to sue and be sued. "The state may sue in the same way as an individual . . . . It may be sued as provided by any statutes in force at the time."[1] Later, the legislature saw fit to allow recovery to people who were injured as a result of some activity of the state. The problem, however, is that the statute passed by the legislature had a very limiting effect in that it required consent on the part of the state to be sued. The applicable portion of the statute from the Code of Iowa (1962) in §613.8 reads:

> upon the conditions herein provided for the protection of the state, the consent of the state is hereby given, to be made a party to any suit or action which is now pending or which may hereafter be brought in any of the district courts of Iowa. . . .[2]

In other words, the state allowed itself to be sued, but only after it had given permission to be sued. The permission was to come from the legislature. Because school districts acted as

> agents or instrumentalities of the state in the performance of a governmental function for which the state is primarily responsible . . . they partake of the state's sovereignty with respect to tort liability.[3]

---

[1]State of Iowa, Code of Iowa, RCP9 (1962).

[2]State of Iowa, Code of Iowa, §613.8 (1962).

[3]86 A.L.R. 1 489.

The tort liability of the school district, then, depends on the same liability the state might have. If sovereign immunity is strongly adhered to in the courts of the state, the school district need not be prepared to defend itself for tortious conduct committed on its behalf. By the same token, if the legislature sees fit to allow suit against a school district, liability may exist. "The government of all school districts is within legislative control."[1]

At one time municipal corporations, that is, villages, towns, and cities were felt to be immune from suit, but the Supreme Court saw fit to differentiate

> between municipal corporations, as incorporated villages, towns and cities, and those other organizations, such as . . . counties, school districts and the like which are established without any express charter, or act of incorporation, and clothed with but limited powers.[2]

But as previously indicated, the courts saw fit to make an exception to that rule in regard to allowing recovery in tort against counties for the negligent maintenance of bridges. At the outset of this study it would appear that the doctrine of sovereign immunity is strictly endorsed by both the legislature and the supreme court, but exceptions have sprung up that show a trend leading away from the rigid enforcement of that rule.

---

[1] Wise v Palmer, 165 Iowa 731, 147 NW 167 (1914).

[2] Kincaid v Hardin County, 53 Iowa 430, 5 NW 589.

The Supreme Court of Iowa has heard six cases that deal directly with the liability of school districts. Each case is unique in that although the doctrine of governmental immunity lies at the base of each case, opinions of the court vary in later cases of the same nature or differ somewhat in cases of a closely related nature. As previously mentioned, the court made certain distinctions as to who or what could be hidden from liability by virtue of the state's sovereign rights.[1] In 1882 the court said:

> A school district is a public corporation, or quasi-corporation, created by statute for the purpose of executing the general laws and policy of the state, which require the education of all its youth. It is a branch of the state government, an instrument for the administration of the laws, and is, so far as the people are concerned, an involuntary organization. . . . In these respects it is not different from a county, except that its functions and the purposes of its organization are more restricted and not so numerous.[2]

It should be stated at this point that now school districts are attempting and succeeding in covering many more far reaching areas in their educational endeavors than the court may have anticipated in 1882. Schools are now involved in electronics, television, radio, and driver's education and as such extend themselves into a greater number of situations that could result in tortious conduct.

---

[1]Supra, Kincaid v Hardin County.

[2]Lowe v District Twp of Woodbury, 58 Iowa 452, 12 NW 478 (1882).

Notwithstanding the lone exception of the counties' liabilities in tort for the maintenance of bridges,[1] counties and their employees found that the court would find cause to make more exceptions, thus further reducing the force and effect of governmental immunity in Iowa.

In Hibbs v Independent School District[2] the court saw fit to extend the shelter of sovereign immunity to an employee of a school district, thus relieving him of liability. In this instance it was a negligent act allegedly committed by the employee that resulted in injury to the plaintiff, a school girl who was thrown from a bus negligently operated by an agent of the school district. The agent achieved that status by virtue of a contract to transport pupils on behalf of the school district. In finding for the employee of the school district, the court admitted:

> No case against an employee of a school corporation directly involving personal liability on his part for negligence causing injury to a pupil has been called to the attention of the court. No reason would seem to exist, however, for granting exemption from liability to the employees of other municipal corporations whose negligence has resulted in injuries or damages for which relief is sought, where the same arose while the municipality was engaged in the performance of a governmental function and to deny the same to an employee of a school corporation when similarly engaged.[3]

---

[1] Supra, Wilson & Gustin v Jefferson County.

[2] Hibbs v Independent School District, 218 Iowa 841, 251 NW 606 (1933).

[3] Ibid.

The administrator of the estate of one Arthur Larsen brought action against the Independent School District of Kane Township in 1937. The action arose when Mr. Larsen, a service amputee, climbed the stage at a Council Bluffs school to address the school children at an Armistice Day celebration. The plaintiff alleged that the school district was negligent in the construction and maintenance of the stairs and immediately adjacent environs and because of that negligence Mr. Larsen fell and later died. The Supreme Court held that the school district was immune from liability as predicated in Lane v District Township (supra), which in turn looked to Kincaid v Hardin County (supra), for legal precedence.[1]

That very same year, 1937, the court modified the rule in respect to the immunity of an employee of a quasi-corporation, in this instance, Keokuk County. The plaintiff in Shirkey v Keokuk County suffered injuries when her car ran into a tractor driven by the defendant, an employee of the county. The incident took place after dark and it was alleged that the defendant was guilty of negligence because he was driving his tractor without its lights on. Although the court found for the county and its employee, a vigorous dissent was registered by Justice Mitchell who

---

[1] Larsen v School District, 223 Iowa 691, 272 NW 632 (1937).

said, concluding:

> An act of misfeasance is a positive wrong, and every employee, whether employed by a private person or a municipal corporation, owes a duty not to injure another person by a negligent act of commission. It is the breach of this duty which the law imposes on all men that is involved, and this general obligation to injure no man by a negligent act of misfeasance is neither increased nor diminished by the fact that the negligent party is an employee of a municipal corporation.[1]

This dissenting opinion acted as the gateway to allow recovery against negligent employees of a quasi-corporation. The opinion stemmed on the term "misfeasance" as opposed to nonfeasance in allowing recovery from a tort feasor in the employ of a heretofore non-suable employer.

The next year the court that had chosen to extend the doctrine of governmental immunity to a person in the employ of a quasi-corporation, decided to constrict the scope of that protection and allow recovery from an employee who committed an act of negligence that resulted in injury. The defendant in Montanick v McMillan was a truck driver employed by the defendant Wapello County. The plaintiff was a young Ottumwa boy who was injured when his bike was struck by a truck driven by the employee of the county. Negligence was alleged and recovery allowed as the court

---

[1]Shirkey v Keokuk County, 225 Kowa 1159, 275 NW 706 (1937).

in overruling previous decisions on the subject said:

> The exemption of governmental bodies and their officers from liability under the doctrine of sovereign immunity is an exception to respondant superior doctrine and in no way affects the fundamental principle of torts that one who wrongfully inflicts injury upon another is liable to the injured person for damages.[1]

A unique situation came to the Iowa Supreme Court's attention in 1939. The plaintiff, the father of a school-age daughter, sought to recover money from Independent School District number 4, Union Township, in Mitchell County. His claim was that he had driven his daughter to and from school, a distance of over two and a half miles each way for several years and that, by statutory provision, it was the responsibility of the school district to provide such transportation. Furthermore, the father alleged that the defendant school district knew of the situation and because the defendant made no arrangement to transport the child, an implied contract developed whereby the plaintiff could recover for expenditures he incurred by so transporting his daughter. In ruling for the school district and reasserting the doctrine of governmental immunity that applies to quasi-corporations of that nature, the court went a step further in drawing the lines within which a school district may operate without incurring liability.

---

[1] Montanick v McMillan, 225 Iowa 442, 280 NW 603 (1938).

The opinion read in part: ". . . this duty was not a mere ministerial function as the transportation of pupils to and from school is a governmental function. . . ."[1] The language definitely states that school districts, while in the performance of governmental functions need not worry about liability resulting from injuries or wrongs committed performing those functions. Conceivably the court had something in mind when it gave mention to ministerial, or proprietary functions. This may be termed a further refinement as to how far the doctrine of immunity would or would not go in protecting school districts.

In the case of Kincaid v Hardin County, the supreme court of Iowa took very definite measures to differentiate "between municipal corporations, as incorporated villages, towns and cities, and those other organizations, such as . . . counties, school districts and the like. . . ."[2] The court modified that view somewhat in the following case when it felt that the immunity of a governmental agency from liability for negligence in the exercise of its governmental functions did not exempt it from liability for a nuisance created and maintained by that agency, the school district.

Ness v Independent School District of Sioux City[3]

---

[1]Bruggeman v School District, 227 Iowa 661, 289 NW 5 (1939).

[2]Supra, Kincaid v Hardin County.

[3]Ness v Independent School District, 230 Iowa 771, 298 NW 885 (1941).

was suit for nuisance. Ness, the plaintiff, alleged that the school district was negligent in creating and maintaining a nuisance. Ness' property was immediately adjacent to a school yard where the children played softball. On numerous occasions softballs would be hit or thrown onto Ness' property. As a result his house and yard and garden were damaged. Ness protested to the school district on many occasions and when he did not achieve his desired results, brought legal action against the school district. The defendant school district countered that it was immune from liability. In accordance with the statutory provision forbidding nuisance, the court found for Ness and quoting in part from a previous case said:

> For the exercise of purely governmental functions a municipal corporation is not liable. The creation and maintenance of a nuisance is very clearly not a governmental function . . .[1]

The Ness case served to further delineate the area within which school districts may conduct their activities and still enjoy the shelter of immunity. That shelter changes in scope as the number of cases recorded increases.

The scope of the doctrine of governmental immunity suffered a sharp blow in 1951. C. A. Brown sought damages from the city of Sioux City when he alleged that the city was negligently responsible for the death of his bees.

---

[1] Fitzgerald v Town of Sharon, 143 Iowa 730, 121 NW 523 (1909).

Employees of the city had sprayed a certain area of that city's income property and through their alleged negligence, Brown's bees died. The Iowa court found for Brown believing that a municipal corporation holding property for profit, or deriving an income therefrom, is liable for negligence in the management of the property to the same extent that individuals and business corporations are liable.[1]

Mr. Justice Smith in his opinion written in the case of Florey v City of Burlington indicated the Iowa Supreme Courts desire to further weaken the rule of governmental immunity. Young Miss Florey, a minor, was injured when she fell off a pathway in a Burlington city park. The allegation was that the city was negligent by not guarding against such an accident. The city responded that maintaining a park is a function that was governmental in nature and therefore the city was not liable. Justice Smith felt that:

> The municipality, like any private corporation, is subject to tort liability and the rule of respondent superior when engaged in purely proprietary activity. The problem arises when it performs governmental functions committed to it by the state. Such functions do not become proprietary by their delegation. Nevertheless tort liability may arise if the municipal corporation negligently fails to perform its governmental duty and dangerous conditions result which

---

[1]Brown v Sioux City, 242 Iowa 1196, 49 N W Z D 853, (1951).

217259

> cause injury to one properly availing himself of the tendered service.[1]

In light of all the previously cited cases in this study to this point, it can be seen that this case does more to weaken the rule of sovereign immunity than any of the others. The court mentions the trend away from immunity in this case, but refuses to abrogate that rule entirely, saying: "Any substantial modification of it must come from the legislature."[2]

It must be remembered that the Iowa court held for a very long time that school districts and counties were quasi-corporations and could not be sued. Later, the rule was extended to include employees of those quasi-corporations. In 1957, the court was asked to decide whether or not the operation of a hospital by a county constituted a governmental or proprietary function. The difference was determined. With the thought in mind that the school districts in Iowa are and have been consolidating in order to insure a greater wealth of resources with which to promote the school district endeavor, the following statement from Wittmer v Letts[3] is set out: Dillon, Municipal Corporations, 5th Ed sec 109, as follows:

---

[1] Florey v City of Burlington, 247 Iowa 316, 73NW2d (1955).

[2] Ibid.

[3] Wittmer v Letts, 248 Iowa 648, 80NW2d 561 (1957).

> In its governmental or public character the corporation is made, by the state, one of its instruments, or the local depository of certain limited or prescribed political powers, to be exercised for the public good on behalf of the state, rather than for itself. But in its proprietary or private character, the theory is that the powers, are supposed not to be conferred, primarily or chiefly, from considerations connected with the government of the state at large, but for the private advantage of compact community, which is incorporated as a distinct legal personality, or corporate individual; and as to such powers and to property acquired thereunder, and contracts made with reference thereto, the corporation is to be regarded quad hoc as a private corporation, at least not public in the sense that the power of the legislature over it or its rights represented by it is omnipotent.[1]

It seems in defining a county as a municipal corporation the court differed from the definition set out in Kincaid v Hardin County (supra) in reference to counties and school districts and quasi-corporations. In that case the Iowa court pointed out that counties and school districts were quasi-corporations, not municipal corporations like cities, towns, or villages.[2]

With the increasing number of injuries arising from motor vehicle accidents involving agents of the sovereign, the legislators saw fit to influence its agents to right their wrongs. A statutory provision allowing the purchase of liability insurance was passed and its effect was to further deny the absolute application of governmental immunity in Iowa. The legislature felt that injured parties

---

[1]Dillon, Municipal Corporations, 5th Ed sec 109.

[2]Supra, Kincaid v Hardin County.

in Iowa should have monetary redress for negligent acts of state employees and others. The Code of Iowa, § 517A, in part reads:

> All state commissions, departments, boards and agencies of all political subdivisions of the State of Iowa, not otherwise authorized, are hereby authorized and empowered to purchase and pay the premiums on liability and property damage insurance covering and insuring all officers and employees of such commissions, departments, boards and agencies while in the performance of their duties and operating an automobile, truck, tractor, machinery, or other vehicles owned or used by said commissions, boards, departments and agencies, which insurance shall insure, cover and protect against individual personal legal liability that said officers or employees may incur.[1]

Due to the ruling of the supreme court that the employees of the municipalities and quasi-corporations of the state could no longer find refuge in the immunity doctrine, the legislature saw fit to allow purchase of liability insurance so injured parties might be recompensed.

The immunity doctrine as applied to school districts in Iowa was further modified in 1961. In Monroe v Razor Construction Company,[2] the defendant Razor Construction Company was a contracted employee of the Clinton School District. The defendant was employed to build a school and swimming pool for the school district. Monroe, the plaintiff,

---

[1]State of Iowa, Code of Iowa C 517A (1962), passed 1959.

[2]Monroe v Razor Construction Company, 252 Iowa 1249, 110NW2d 250 (1961).

alleged that the defendant negligently set off explosions in its blasting operations that resulted in damage to the Monroe property. The Iowa court felt that the defendant was negligent and liable in tort saying in part:

> When the work is done by an independent contractor for a governmental body, and he operates in accordance with the plans and specifications of the government, he has the same immunity, and no recovery may be had . . . but, if there had been negligence on the part of the defendants, they could claim no share in governmental immunity from suit.[1]

That language of the court allows immunity in one instance and removes it in another. From the cases cited to this point in the development of the trend, it can be seen how the doctrine of sovereign immunity relating to school districts has been altered and, by the same token, weakened.

Finally, in 1963, three members of the Iowa supreme court in an opinion specially concurring with the majority of the court written in Moore v Murphy indicated a desire to completely abrogate the immunity doctrine with special attention given to the liability of school districts. Although the case itself did not question the doctrine of Sovereign immunity the court said:

> It has been argued on behalf of the defendants that if immunity is abolished public schools will be deluged with claims for injuries resulting from inadequate supervision, from frostbite while waiting for busses, from blows struck by other children, from forbidden and mischievous activities impulsively and foolishly inspired, and from a host of other causes. School

---

[1] Ibid.

children have a special status in the eyes of the law, and in view of the compulsory attendance statute, deserve more than ordinary protection. Operating an educational system has been described as one of the nation's biggest businesses. (emphasis supplied) The fact that subdivisions of the government now enjoy no immunity in a number of areas of activity has not noticeably circumscribed their usefulness or rendered them insolvent.

Nor have our privately endowed schools and colleges been forced to close their doors or curtail their academic and extra-curricular program because the law has imposed on them liability for the negligence of their employees in dealing with students and the public. Whatever may have been the economy in the time of "Men of Devon," it is absurd today that school districts cannot today expeditiously plan for and dispose of tort claims based on the doctrine of respondent superior.

With such a wide trend established by these and other decisions those who rely on immunity as a defense must realize our court-made doctrine of governmental immunity may be subjected to a re-examination in the near future.[1] (emphasis supplied)

In Cherokee, in 1963, two patrolmen conducted a spot check on automobiles and due to their negligence in the performance of their duty, a plaintiff's house was damaged. The Iowa court felt that the city employees were liable for misfeasance within the realm of their specified duties.[2] This case went a step farther away from the doctrine of immunity.

The most recent case to appear before the Iowa Supreme Court concerning the tort liability of school

---

[1] Moore v Murphy, Iowa , 119 NW 2d 759, from Spanel v Mounds View School District (Minnesota) 118 NW 2d (1962).

[2] Johnson v Baker, Iowa , 120 NW 2d 770 (1963).

districts is Boyer v IHSAA.[1] The Boyer case may be held in years to come as the landmark in establishing the fact that school districts can be held liable in tort.

A high school basketball tournament was held at a Mason City school. Due to the alleged negligence of the defendant school district, a section of the bleachers collapsed, thereby injuring the plaintiff. The game was held under the auspices of the Iowa High School Athletic Association. The school district, by contract, was to receive money for so conducting the affair. The Iowa court narrowly found for the defendants in a 5-4 verdict. The opinion of the majority read in part as follows:

> We are fully aware of the trend away from governmental immunity. We took note of it in . . . Florey v City of Burlington. The writer joined in a specially concurring opinion to Moore v Murphy, which warned that the doctrine of governmental immunity might be re-examined in the near future. This has now been done. The conclusion reached from such a re-examination is, or stated, that abrogation of the doctrine should come from legislative, not judicial action.

Mr. Justice Moore's dissent in this case was most vigorous and will undoubtedly be the basis of future actions against school districts. At one point in his dissenting opinion, Justice Moore quotes from 75 ALR 1196:

> The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is

---

[1] Boyer v Iowa High School Athletic Association, Iowa , 127NW2d 606 (1964).

> incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim, "the king can do no wrong," should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government, where it could be borne without hardships upon any individual, and where it justly belongs.[1]

Later in his opinion, Justice Moore summed up the feeling of nearly all legal authorities who have written about the doctrine of immunity: "The law should be progressive; it should advance with changing conditions."[2] In light of the opinion set forth in Moore v Murphy, it would appear that the immunity formerly enjoyed by school districts is rapidly dissolving.

In the spring of 1965 the Iowa General Assembly passed what it called the Iowa Tort Claims Act.[3] The purpose of this act is to allow claims against the state for injuries committed by certain named agencies or agents of the state. Although school districts are not among those named in this bill, the overall concept of the doctrine of governmental immunity from liability in tort was further weakened. The trend away from that doctrine is not static.

---

[1] 75 ALR 1196.

[2] Supra, Johnson v Baker.

[3] Senate File 322, IGA62. No other cites available at time of this printing.

CHAPTER IV

CONCLUSION

The purpose to be achieved by pursuing the trend concerning the tort liability of school districts in Iowa was twofold. An examination of the status of the law relating to the tort liability(ies) of school districts in Iowa was one of the proposed objectives. The other proposed objective was to evaluate the changes in the law relative to school district liability.

By its own admittance in the more recent cases involving immunity, the courts of Iowa have created a rule that must be abrogated. Early in this study it was shown how immunity was extended to anyone involved in the governmental endeavor. Later the definition of what constituted a governmental function was refined. Still later those who made up that group known as employees of the sovereign was the topic of consideration. As the court moved away from the theory of sovereign immunity, so did the legislature. Now in 1965, the move is nearly complete and the school districts of Iowa stand out as the exception to a rule that in itself is an exception to the law of torts--"Every wrong demands redress."[1]

---

[1]Prosser and Young, Cases and Materials on Torts (third edition; 1962).

Perhaps no principle of law has been under such persistent attack over the years. Quite recently, the doctrine of governmental immunity has been cast aside in many states. As of 1965 at least twelve states have abrogated the doctrine of governmental immunity, either by opinions from their supreme courts or by legislative enactment. These states include: California, Florida, Washington, New York, Arizona, Michigan, Wisconsin, Illinois, Minnesota, New Jersey, and New Mexico.

The California court pointed out that immunity from liability for tort has never been the prevailing law in the United States. "In formulating 'rules and exceptions' we are apt to forget that when there is negligence, the rule is liability. Immunity is the exception."[1]

The Illinois court that saw the immunity of school districts wiped away emphatically stated: "We conclude that the rule of school district immunity is unjust, unsupported by any valid reason, and has no rightful place in modern day society."[2]

The conclusion is quite clear that the trend leading away from governmental immunity is very real. Iowa School

---

[1]Mueskopf v Corning Hospital District, 11 Cal Rep 89, 55 Cal 2d 211, 359 P2d 457 (1961).

[2]Molitor v Kaneland Community Unit District, 18 Ill 11, 163 NE2d 89, (1959).

districts in the pursuance of the educational endeavor will no longer find themselves shielded by the cloak of immunity. The Iowa Court has followed its neighboring state supreme courts on many occasions. In its own words, the Iowa supreme court has set out in dictum: "The whole doctrine of governmental immunity rests upon a rotten foundation."[1] The trend shows the way to the very near future that the school districts in Iowa will be liable for their torts and the torts of their employees.

> Only the vestigial remains of such governmental immunity have survived; its requiem has long been foreshadowed. For years the process of erosion of governmental immunity has gone on unabated. The legislature has contributed mightily to that erosion. The courts, by distribution and extension, have removed much of the force of the rule. (italics supplied) Thus, in holding that the doctrine of governmental immunity for torts for which its agents are liable has no place in our law; we make no startling break with the past, but merely take the final step that carries to its conclusion an established legislative and judicial trend.[2]

I. ANALYSIS

Immunity enjoyed by the school districts in Iowa may be considered to have had a reasonable beginning. At that time the scope of the school district endeavor was extremely restricted and, although the schools were

---

[1] Supra, Moore v Murphy.

[2] Supra, Mueskopf v County Hospital.

satisfactory for their time, by present day standards, they achieved little. Today, schools are big business. School districts attempt to delve into areas that at the turn of the century would have staggered the imagination of even the most progressive-minded citizen. The school districts in Iowa have entered areas of driver's education, aviation instruction, computer programming, welding, sheet metal work, commercial and industrial electronics, radio and television--the list of school district endeavors is endless. Now with the scope increasing, the Iowa school districts must be on guard. The expansion of education in the state places the school districts into situations that could result in injury to innocent parties. No longer can the school district defend itself by pleading a lack of funds to allow for the recovery of tort claims. No longer can the school district claim that its duties are strictly governmental while it collects rent for the use of its facilities.

BIBLIOGRAPHY

BIBLIOGRAPHY

A. BOOKS

Black's Law Dictionary. Fourth edition. West Publishing Company, 1951.

Dillon. Municipal Corporations. Fifth edition, sec 109.

Federal Tort Claims Act, 28 United States Code Annoted. 1962 Supp.

75 A.L.R. 1196.

86 A.L.R. 2d 489.

Iowa Constitution, Art IX sec 1-15.

New York Court Claims, Act 8.

Patterson, Edwin W. Jurisprudence, Men and Ideas of the Law. First edition. Foundation Press, Inc., 1953.

Pliucknett, T. F. A Concise History of the Common Law. Fourth edition. Little Brown, and Co., 1956.

Prosser and Young. Cases and Materials on Torts. Third edition. 1962.

Rules of Civil Procedures (in Iowa) 9.

Senate File 322 I.G.A. 62. No other cites available at this time.

State of Iowa. Code of Iowa. C 613.8 (1962).

State of Iowa. Code of Iowa. C 517 A.1 (1962). Passed 1959.

"States, Territories, and Dependencies," American Jurisprudence. IL, Chapter 76, p. 285.

Washington Session Laws, Chapter 136. 1961.

B. PERIODICALS

Borchard, E. M. "Governmental Immunity," Yale Law Journal, CXXIX (1924-25), 229.

_____. "Governmental Immunity," Yale Law Journal, MCCLVII (1926-27), 1039.

Chambers, M. M. "When Can A School District Be Sued?" Nation's Schools, XII, No. 3 (September, 1933), 57-58.

Hard, J. R. "The Doctrine of Sovereign Immunity in Iowa," 14 Drake Law Review 7 (1961).

New York University Law Review, 13, 63,1415.

"School District Liability," Yearbook of School Law (1933), 145.

"School District Liability," Yearbook of School Law (1942), 76-85.

"School District Liability," Yearbook of School Law (1951).

"School District Liability," Yearbook of School Law (1963).

Stafford, Earl. "Tort Liability of School Districts," Elementary School Journal, XXX (September, 1929), 34-50.

Stevens, S. C. "New Tendency in Tort Liability of School Districts," American School Board Journal, LXXXIV (June, 1932), 39-40.

C. OTHER SOURCES

Anderson v Moon. 225 Iowa 70 280 NW 608. 1938.

Barker v City of Santa Fe. 47 NM 85, 136 P2d 480. 1943.

Boyer v Iowa High School Athletic Association. Iowa 127 NW 2d 606. 1964.

Brown v Sioux City. 242 Iowa 1196, 49 NW 2d 853. 1951.

Bruggeman v School District. 227 Iowa 661, 289 NW 5. 1939.

Conrad v Des Moines. 112 NW 2d 360 Iowa. 1961.

Fitzgerald v Town of Sharon. 143 Iowa 730, 121 NW 523. 1951.

Florey v City of Burlington. 247 Iowa 316, 73 NW 2d 770.

Halytz v City of Milwaukee (Wis.). 115 NW 2d 618.

Hargrove v Town of Cocoa Beach (Fla.) 96 So. 2d 130, 60 A.F. 2d. 1913.

Hibbs v Independent School District. 218 Iowa 841, 251 NW 606. 1933.

Hutson v Iowa County. 43 Iowa 456. 1876.

Johnson v Baker. Iowa , 120 NW 2d 770. 1963.

Kincaid v Hardin County. 53 Iowa 430. 1880.

Kinzer v Toms. 129 Iowa 441. 1906.

Lane v District Township of Woodbury. 58 Iowa 462, 12 NW 478. 1182.

Larsen v School District. 223 Iowa 691, 272 NW 632. 1937.

McAndrew v Mularchuk. 33 N.J., 162A 2d 820. 1960.

Molitor v Kaneland Community United District. 18 Ill. 11, 163 NE 2d 89. 1959.

Monroe v Roger Construction Co. 252 Iowa 1249, 110 NW 2d 250. 1961.

Montanick v McMillan. 225 Iowa 442, 280 NW 608. 1938.

Moore v Murphy. Iowa , 119 NW 2d 759. 1963.

Moreland v Mitchell County. 40 Iowa 394. 1874.

Mueskopf v Corning Hospital District. 11 Cal Rep 89, 55 Cal 2d 211 359 P2d 457. 1961.

Ness v Independent School District. 230 Iowa 771, 298 NW 855. 1941.

Russell v Men of Devon. 100 Eng Rep 359, 2 T.R. 667. 1778.

Soper v Henry County. 26 Iowa 264. 1868.

Sawaya v Tucson High School District (Ariz.) 281 P2d 107.

Shethan v Harrison County. 172 Iowa 81, 152 NW 12.

Spanel v Mound's View School District (Minn.) 118 NW 2d 795. 1962.

Shirkey v Keokuk County. 225 Iowa 1159, 275 NW 706. 1937.

State v Migner. 50 Iowa 145. 1878.

Stone v Arizona Highway Commission (Ariz.) 381 P2d 107.

Williams v City of Detroit (Mich.) 11 NW 2d 1.

Wilson & Gustin v Jefferson County. 13 Iowa 181. 1862.

Wittmer v Letts. 248 Iowa 648, 80 NW 2d 561. 1957.

Wise v Palmer. 165 Iowa 231, 147 NW 167. 1914.

D. UNPUBLISHED MATERIALS

Kok, Roland, "Tort Liability in H. and D.E. Activities" (unpublished Master's thesis, Drake University, Des Moines, Iowa, 1963).